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Fees

For sales fees, SEE: Sales.

For application fees, SEE: Use authorizations

For rental fees, SEE: Rent.

For use and occupancy fee, SEE: Unauthorized uses.

Fill

RCW 79.90.480: Determination of annual rent rates for lease of aquatic lands for water-dependent uses--Marina leases.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.90.500 in those cases in which the state owns the fill and has a right to charge for the fill.

RCW 79.90.515: Aquatic lands--Rent for improvements.

Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending. If improvements were installed under a good faith belief that a state aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a

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lease or files suit to determine if a lease is required. [1984 c 221 § 14.]

WAC 332-30-118: Tidelands, shorelands and beds of navigable waters.

(16) Filling on second class tidelands or shorelands will not be permitted except when in the public interest.

(17) When permitted, any fill on these aquatic lands must be stabilized to prevent washout into the marine environment.

(18) Material from aquatic lands will not be used for stream bank stabilization and revetments except when in the public interest.

WAC 332-30-139: Marinas and moorages.

(1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

Discussion on fill

The general terms and conditions for leases that involve areas of filled aquatic land or areas planned for fill are the same as for other uses of aquatic lands. When the applicant owns or intends to install fill, that fill is generally treated as an improvement (in the sense of a structure, not a betterment). SEE ALSO: Use authorizations; Improvements.

However, because filling eliminates the aquatic characteristics of the land, the department generally discourages this particular improvement. Staff must give greater attention to the possible adverse impacts of a fill than for most improvements or use authorizations. In particular, the analysis of the proposal should consider how the fill will alter the quantity, quality, and distribution of aquatic habitat.

Fill is often used in the disposal of contaminated sediments, by either covering contaminated sediments with clean fill or by using these sediments as fill that is then paved to create uplands. Before the department approves a project involving the filling of aquatic lands, the proponent should be asked to justify why their fill project is consistent with and furthers the

department's stewardship responsibilities and statutory requirements. Historical records can sometimes shed light on the quality and source of the fill material, although the habitat impacts of older fills are probably not on record. SEE ALSO: Sediments.

For those areas of state-owned aquatic lands already filled, a challenge arises when determining the ownership and composition of the fill itself. Unless agreed between the department and the lessee prior to construction, rent will not be charged on any lease of state-owned aquatic lands for improvements, including fill, authorized by the department or placed on the leasehold by the lessee or its predecessor before June 1, 1971. This exemption from paying rent on improvements is in effect only if the land remains under lease or a succession of leases.

Based on this statute, the ownership of existing fill material on many aquatic lands remains with the lessee. In these cases, the value of the underlying aquatic land for rent purposes can be difficult to determine. Generally, filled areas have a higher market value and attract nonwater-dependent uses. The lessee may argue that most of the value is due to the fill, not the underlying land, and that the lessee should pay little rent for the land. The proper approach to valuing the aquatic land, however, is to establish the land's market value without the fill but with the right to add fill. The latter element, not the fill itself, may be the most economically valuable element. Therefore, the value of the land can be calculated by establishing the market value of the land and fill together and then subtracting the current cost of adding the fill. SEE ALSO: Valuation.

When the state owns the fill and has a right to charge rent for it, rent should be charged for the land and the fill in accordance with RCW 79.90.500, which means at full nonwater-dependent rates for both. SEE ALSO: Nonwater-dependent uses.

Flood control

SEE: Sediments.